IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RANDY L. DILLON,

Petitioner,

v. **Case No. 2:10-cv-638**

JUDGE JAMES L. GRAHAM
Magistrate Judge Kemp

WARDEN, ROSS CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

On April 3, 2012, this Court entered judgment dismissing this habeas corpus action. Petitioner filed a notice of appeal on May 1, 2012, which the Court will construe as an application for a certificate of appealability. For the reasons which follow, the application will be granted in part and denied in part.

I.

In this case, the Court has dismissed some claims on the merits and others on procedural grounds. When a claim has been denied on the merits, a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). *See Slack v. McDaniel*, 529 U.S. 473, 483 (2000). To make a substantial showing of the denial of a constitutional right, a petitioner must show

> that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were " 'adequate to deserve encouragement to proceed further.' " *Barefoot*, 463 U.S., at 893, and n. 4 ....

Slack v. McDaniel, 529 U.S. at 484.

When the Court dismisses a claim on procedural grounds, a certificate of appealability should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id*. Thus, there are two components to determining whether a certificate of appealability should issue when a claim is dismissed on procedural grounds: "one directed at the underlying constitutional claims and one directed at the district court's procedural holding." The court may first "resolve the issue whose answer is more apparent from the record and arguments." *Id.*

II.

Two of petitioner's four claims were dismissed on grounds of procedural default. Petitioner has conceded that claim two was procedurally defaulted. As to claim four, it is evident that petitioner both defaulted this claim and that he cannot demonstrate cause for that default. For the reasons set forth in Section III of the Opinion and Order of April 3, 2012, the Court concludes that reasonable jurists could not differ as to this procedural ruling, and the Court therefore will not issue a certificate of appealability as to either claim two or claim four.

III.

Claims one and three were dismissed on their merits. Although the Court stands firm it its belief that the state courts' determination of these two claims was neither in conflict with clearly established federal law or an unreasonable application of that law, reasonable jurists could debate the correctness of that ruling. Therefore, the Court will issue a certificate of appealability as to these two claims, namely that petitioner was denied the opportunity to present a meaningful defense through evidentiary rulings made by the trial judge, and that the evidence was insufficient to support his conviction.

IV.

The Court, having construed the notice of appeal (ECF No. 30) as an application for a certificate of appealability, issues such a certificate as to these claims:

1. Ground One: Petitioner was denied due process when he was denied his constitutional right to present a defense.

2. Ground Three: Petitioner was denied due process of law when there was insufficient evidence to convict him.

IT IS SO ORDERED.

Date: May 8, 2012

s/James L. Graham
James L. Graham
United States District Judge